



Award No. 15627
Docket No. CL-15879

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) Carrier violated the Agreement rules when it failed to assign Mrs. Frances S. Bowen to a Rate Clerk Position in the Rate Department, depriving her of seniority rights and compensation and in lieu thereof assigned the position to Mr. B. F. Rogers with less seniority.

(b) Mrs. Frances S. Bowen shall be compensated the difference in her rate of pay of \$21.11 a day and that of the Rate Clerk's position of \$22.75, beginning January 16, 1964, and continuing until she is properly assigned the higher-rated position.

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the claimant in this case holds position and the Southern Railway Company.

On January 31, 1964, Mrs. Frances S. Bowen had been an employe of the Southern Railway Company for a period of over twelve (12) years. During this period of time she had nine (9) years of rate and division experience.

Chairman, Protective Committee, Mr. E. E. Yancey, filed claim on January 31, 1964 (Employees' Exhibit A).

This claim was declined by Director, Revenue Accounting Mr. J. T. Bolling on March 18, 1964 (Employees' Exhibit B).

Appeal was made to Mr. G. H. Keller, Assistant Comptroller, by Chairman, Protective Committee, Mr. E. E. Yancey, his appeal of March 24, 1964 (Employees' Exhibit C).

ticular, vacancies covered by this agreement will be filled in accordance with principles defined in Rule 15 (exclusive of the notes) in the following manner, except that merit, capacity and qualifications being sufficient, seniority shall govern:

The officer in charge where vacancy occurs will within two days, bulletin such position to all employes of the group or class on the seniority district in which vacancy exists. Bulletin to show location, title, rate of pay, and preponderating duties of position, number of hours assigned per day, and number of days assigned per week, subject to reduction in weeks in which holidays occur by the number of such holidays. Employes desiring such position must, within five calendar days (except in General Offices at Washington, Cincinnati, Atlanta and Chattanooga, where the period shall be two working days) after bulletin is posted, make written application to the officer issuing the bulletin. The bulletin shall expire at twelve o'clock midnight on the fifth or second day, as the case may be. From these applications the senior qualified employe shall be assigned to the position within fifteen (15) days, and bulletin will be posted giving name of successful applicant. If requested, copy of all bulletins will be furnished Local Chairman.

NOTE NO. 1: The word 'sufficient' as used above is intended to establish the right of the senior qualified employes to be assigned to new positions or vacancies covered by Section (a) of this Rule 16 over junior qualified employes."

"RULE 17. TEMPORARY VACANCIES

(Revised, effective October 1, 1938)

Temporary vacancies of thirty (30) days or less, or temporary vacancies up to ninety (90) days, when occasioned by the granting of leave of absence, or absence on account of sickness, may be blanked for all or any part of the period of the vacancy; should such position be filled it may be done at the discretion of the officer in charge.

NOTE NO. 1: When such temporary vacancies are filled, either for the entire period or portion thereof, as provided in Rule 8, preference for such work shall be given to employes holding seniority in group or class in which vacancy occurs, * * *

OPINION OF BOARD: The Claimant in this case contends that the Carrier violated the agreement rules by filling two temporary vacancies as Rate Clerk with an individual junior to her. Claimant's seniority date was 1951, whereas the employe designated by the Carrier to fill the temporary vacancies has a seniority date of 1963. The number of days involved in the instant claim is 34 work days in January and April, 1964. The position became vacant on these days because of the illness of the regular incumbent. Precisely stated, the issue to be resolved in this case is whether or not the Carrier must observe seniority when filling temporary vacancies.

Rule 17 of the Agreement, entitled "Temporary Vacancies (Revised, effective October 1, 1938), reads as follows:

"Temporary vacancies of thirty (30) days or less, or temporary vacancies up to ninety (90) days, when occasioned by the granting of leave of absence, or absence on account of sickness, may be blanked for all or any part of the period of the vacancy; should such position be filled it may be done at the discretion of the officer in charge.

NOTE NO. 1. When such temporary vacancies are filled, either for the entire period or portion thereof, as provided in Rule 8, preference for such work shall be given to employees holding seniority in group or class in which vacancy occurs, but this privilege does not extend to employees in other groups or classes unless an employee holds seniority in the group or class in which vacancy occurs."

The first paragraph is quite clear in that it gives Carrier the option to fill or blank temporary vacancies. The proper interpretation of the second paragraph is at issue in resolving this claim. Carrier contends that an employee is only required to have seniority and need not be the senior qualified employee as the Petitioner alleges.

Rule 17 is distinguishable from Rule 16 of the Agreement which clearly and unambiguously provides that preference be given the senior employee possessing sufficient merit, capacity and qualifications for a bulletined vacancy. Rule 17, however, does not specify the senior employee, merely employees holding seniority.

The exact same issue involving the same parties and the identical contractual language, was presented and decided in Award 4533 (Carter). In that decision, the Board discusses Rule 5 (d) which is identical to our Rule 17, as follows:

"It is clear to us that under Rule 5 (d) the Carrier can fill temporary vacancies occasioned by leaves of absence or sick leave, or it may blank them, as it sees fit. The note attached to the rule permits the Carrier to use its own judgment as to the employee to be used in case it elects to fill the vacancy, except that it must be an employee holding seniority in the class or group in which the vacancy occurs, or an employee in another group or class who also has seniority in the class or group where the vacancy existed. There is no requirement in this rule that the senior employee is to be assigned; in fact, the inference is that he need not be."

We agree with Award 4533, re-emphasizing the fact that the interpretation of Rule 17 contained therein is sound and correct. We will deny the claim.

FINDINGS: The Third Division of the Adjustment Board after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1967.